REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested in view of the foregoing amendments and discussion presented herein.

1. Telephonic Conversation June 16, 2008.

Applicant appreciates the opportunity of discussing, on June 16, 2008, the options outlined by the Examiner in overcoming the 35 USC 103(a) rejections as outlined in the Office Action. Mechanisms for showing the common assignment of the Tree reference were briefly discussed.

2. Rejection of Claims 1-27, 30-32, 34-37, and 41-43 under 35 U.S.C. § 103(a).

Claims 1-27, 30-32, 34-37 and 41-43 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Tree (U.S. Pat. App. Publ. 2002/0145943) in view of Matsushima et al. (U.S. Pat. No. 6,912,514).

After carefully considering the grounds for rejection the Applicant responds as follows. The above group of claims includes independent Claims 1, 20, 31, 42, and 43. Support for the rejection suffers from intractable shortcomings.

First, the Tree reference is subject to common assignment to Sony with the instant application, as is shown by the attached documentation. According with MPEP 706.02(l), which applies to rejections under 35 USC § 103(a) using prior art under 35 USC § 102(e)/(f)/(g). The first section of this states "*Subject matter developed by another person which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.*"

It will be noted that the Tree reference and the instant application were each commonly assigned to Sony at the time of filing. The assignment of the Tree application was recorded 04/06/2001 on reel/frame 011693/0502, while the assignment of the instant application was recorded 08/17/2001 on reel/frame 012096/0312. In

addition, these applications were originally assigned, and are still commonly assigned, to Sony.

It should be noted that the Tree Application associated with (U.S. Pat. App. Publ. 2002/0145943) was abandoned; therefore, a terminal disclaimer for the Tree application would not be necessary to overcome non-statutory double-patenting, as no claims will issue from that application.

Secondly, in regard to the combination of the Matsushima reference with the Tree reference it should be appreciated that the Matsushima reference is directed to a content distribution server and does not provide any means for accessing playlists in response to receipt of data marks, but only that of selecting content which is conventionally specified, such as by artist, album, title, and so forth, as can be seen from FIG. 3A-3B, and FIG. 4 as well as throughout the specification describing conventional selection criterion. The specification of the instant application, as well as the claims themselves, make it clear that a "*data mark*" cannot be properly interpreted as being the same as a conventional specification of title, album, artist and so forth. Consequently, even though Matsushima describes a form of user terminal, it does not describe any mechanisms for translating data marks or for interacting with the data marking device according to the claims of the instant application. Matsushima is directed at different objects and has different operating principles than both the Tree reference and the instant application.

Accordingly, the Matsushima reference cannot be combined with Tree, while the Tree reference is overcome as being subject to common assignment. Therefore, Applicant respectfully requests that the rejection be withdrawn and the instant application allowed to issue.

3. Rejection of Claims 1-27, 30-32, 34-37, and 41-43.

The above group of claims was rejected on the basis of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-18 of U.S. Patent No. 7,127,454 and Claims 1-26 of U.S. Patent No. 7,107,234.

A terminal disclaimer is attached which disclaims the terminal portion of the instant application beyond that of the above two patents.

4. Rejection of Claims 1-27, 30-32, 34-37, and 41-43.

The above group of claims was rejected on the basis of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-12 of U.S. Patent No. 7,190,971, Claims 1-17 of U.S. Patent No. 7,062,528, and Claims 1-61 of U.S. Patent No. 6,578,047.

A terminal disclaimer is attached which disclaims the terminal portion of the instant application beyond that of the above three patents.

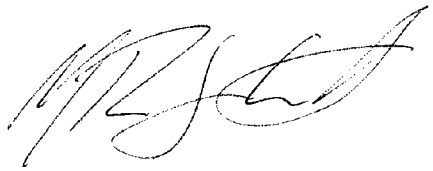
5. Conclusion.

Based on the foregoing, Applicant respectfully requests that the various grounds for rejection in the Office Action be reconsidered and withdrawn with respect to the documentation and remarks presented herein, and that a Notice of Allowance be issued for the present application to pass to issuance.

In the event any further matters remain at issue with respect to the present application, Applicant respectfully requests that the Examiner please contact the undersigned below at the telephone number indicated in order to discuss such matter prior to the next action on the merits of this application.

Date: July 16, 2008

Respectfully submitted,



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